

# APPENDIX

EX. A

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

MATTHEW ROGERS,  
by his next friend and Guardian,  
KAREN BROWN

Plaintiff,

vs.

JON WEIZENBAUM, in his official  
capacity as COMMISSIONER,  
TEXAS DEPARTMENT OF AGING and  
DISABILITY SERVICES and  
KYLE JANEK, in his official  
capacity as EXECUTIVE  
COMMISSIONER, TEXAS HEALTH  
AND HUMAN SERVICES COMMISSION

Defendants,

Cause No. 3:12-cv-4055

AFFIDAVIT OF JOSEPH VIROSLAV, M.D.

STATE OF TEXAS  
COUNTY OF DALLAS

BEFORE ME, the undersigned authority, on this day personally appeared JOSEPH  
VIROSLAV, M.D. known to me to be the person whose name is subscribed hereto, and being by  
me duly sworn, on oath deposed and stated the following:

1. "My name is JOSEPH VIROSLAV, M.D. I am an adult resident of Dallas, Dallas  
County, Texas, over the age of 18 years, and am a United States citizen. I am fully

competent to make this affidavit, and have personal knowledge of the facts stated herein.

2. "I am Matthew Rogers treating pulmonologist. Matthew has been my patient approximately two years.
3. The purpose of my affidavit is to update my June 7, 2012 letter regarding Matthew Roger's medical condition. Since my June 7, 2012 letter, Matthew's condition has deteriorated.
4. Matthew's medical diagnoses include the following: massive brain damage, spastic quadriparess, intractable epilepsy, severe pulmonary restriction, chronic lung disease, difficulty controlling secretions leading to aspiration, static encephalopathy, cortical blindness, hypertonia, and global developmental delay. In addition, Matthew cannot stand limiting him to his bed and wheelchair; he also is non-verbal making it extremely difficult for him to communicate changes in his medical condition, pain-related issues or his need for any kind of assistance. In other words, Matthew is totally dependent on his nurses and family care givers for all of his care and for all of his activities of daily living.
5. I last saw Matthew as a patient on February 14, 2013. Matthew had been hospitalized for seizures. Unfortunately, after his release, the seizure medication Matthew takes has a sedating effect. That is, the sedating effect adversely impacts Matthew's ability to process oral secretions placing him at risk for aspiration. Care-givers, therefore, must be prepared to not only monitor Matthew's pulmonary functions but also be prepared to suction him and/or perform chest percussion therapy beyond current suction treatment levels, on an ongoing basis.
6. The fact is, Matthew's pulmonary status and current seizure activity places him at a significant risk. To be clear on his current pulmonary status, equipment and treatment he currently receives includes Nebulizer—every 4 hours; suction—every four hours with

treatments; bipap--overnight; 24/7 when congested, pulmonary vest--every four hours &  
PRN, IPPV --Intermittent positive pressure ventilation--every 8 hours & PRN, cough  
assist--every four hours and oxygen tanks and concentrator--PRN.

7. Finally, based on these complexities, around-the-clock private-duty nursing and attendant  
care services on a daily basis continues to necessary to ensure Matthew's overall health and  
safety and to avoid future hospitalizations.

Further Affiant saith naught.

Date: May 2, 2013

Joseph Viroslov, M.D. Affiant

SUBSCRIBED AND SWORN TO BEFORE ME on this 2nd day of May, 2013 by,  
JOSEPH VIROSLAV, M.D. to certify which witness my hand and official seal of office.

Katherine M. Foobs  
Notary, State of Texas



EX. B

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

MATTHEW ROGERS,  
by his next friend and Guardian,  
KAREN BROWN

Plaintiff,

vs.

JON WEIZENBAUM, in his official capacity as COMMISSIONER, TEXAS DEPARTMENT OF AGING and DISABILITY SERVICES and KYLE JANEK, in his official capacity as EXECUTIVE COMMISSIONER, TEXAS HEALTH AND HUMAN SERVICES COMMISSION

Defendants,

§ 102-21-102. (a) The following shall constitute the official seal of the State of Connecticut:

Cause No. 3:12-cv-4055

AFFIDAVIT OF KAREN BROWN

STATE OF TEXAS  
COUNTY OF DALLAS

BEFORE ME, the undersigned authority, on this day personally appeared KAREN BROWN known to me to be the person whose name is subscribed hereto, and being by me duly sworn, on oath deposed and stated the following:

1. “My name is KAREN BROWN. I am an adult resident of Dallas, Dallas County, Texas, over the age of 18 years, and am a United States citizen. I am fully competent to make

this affidavit, and have personal knowledge of the facts stated herein.

2. "I am Matthew Rogers' mother and guardian.
3. The purpose of this affidavit is to update my letter describing Matthew's medical diagnosis, medical conditions, and home nursing care.
4. As stated in my June 15, 2012 letter Matthew's medical diagnosis continues to include massive brain damage, spastic quadriparesis, intractable epilepsy, severe pulmonary restriction, chronic lung disease, difficulty controlling secretions leading to aspiration, static encephalopathy, cortical blindness, hypertonia, and global developmental delay. Further, Matthew is non-verbal making it impossible for him to communicate his need for medical care or assistance with his daily activities. Also, Matthew is non-ambulatory which limits him to his bed and wheelchair. In short, Matthew totally depends on his nurses and family care givers for assistance with all activities related to his medical care and daily living.
5. Recently, on or about January 15, 2013, Matthew began experiencing episodes of dyspnea. This episode occurred as a result of his seizures and caused Matthew to stop breathing. His oxygen saturation levels had dropped to a dangerous level, dropping as low as 55%.
6. My nurses and attendants attempted to break up the seizures and keep Matthew's oxygen saturation levels from falling using his vagal nerve stimulator magnet, rectal Diastat and a home oxygen concentrator were unsuccessful.
7. As a consequence, on or about January 19, 2013, Matthew required emergency room care at St. Paul University Hospital in Dallas, Texas where he was admitted to St. Paul's Intensive Care Unit. An EEG confirmed his episodic dyspnea was related to Matthew's



severe seizures.

8. At first, Matthew's doctors could not find any cause for these seizures. They suspected a urinary tract infection, but it was not so severe as to cause this level of seizures. They also suspected a problem with Matthew's Baclofen pump catheter. In the ICU treating his seizures and resulting dyspnea proved, at times, to be problematic. He was released from the hospital approximately 3 weeks later.
9. Matthew's seizures were only stabilized after administering 1600 mg. of Banzel and 5000 mg. of Keppra, a very large increase from his previous dosage.
10. In the interim, Matthew stopped passing urine on his own and it has become necessary to start catheterizing him on a regular basis each day. However, replacing the Baclofen pump did not stop the seizures. The high levels of medication has stopped the dyspnic seizures, but he continues to have at least 3-5 seizures per day. The amount of medication Matthew must take to keep his seizure level this low is extremely sedating, making it difficult for Matthew to handle his own secretions.
11. Surgery was performed to replace the Baclofen pump and the catheter on March 5, 2013.
12. On or about April 12, 2013, I noticed redness and swelling around his abdominal incision. Matthew never had any fever, but he was clearly not well. On or about April 17, 2013, Matthew had an appointment with Dr. Gul, for Pain Management and Rehabilitation, and I had made one with Neurosurgery as well. The clinic examined incision and called Dr. Flores from Neurosurgery, who also examined the incision. Both clinics were very concerned about the infection and the real possibility of having to put Matt back into the hospital, titrate him off the Baclofen pump to Baclofen through his g-tube, remove the Baclofen pump and catheter and put him on IV antibiotics for up to 6

weeks. Matthew's white blood count was elevated and he was started on an antibiotic. I was instructed to take him to the ER if he started to run a fever.

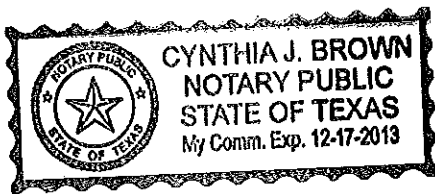
13. Matthew has been able to remain at home. His infection is clearing with the use of two strong oral antibiotics given via his g-tube. Whether his infection returns when he completes his dosage of the two antibiotics, remains to be seen. We continue to work closely with the Neurosurgery clinic.
14. Prior to these new complications, Matthew went into the community on a regular basis as described in my June 15, 2012 letter. Since his hospitalization and with these new complications, with the exception of attending doctor appointments, Matthew rarely leaves our home, and on many days, does not even leave his bed.
15. Matthew's condition requires 24 hour around-the-clock supervision. Specifically, Matthew requires a minimum of 128 hours of private-duty one-to-one skilled nursing care, along with 40 hours of attendant care to meet his medical care needs and to maintain his overall health and safety in the home.
16. In sum, as I stated in my June 15, 2012 letter, given the complexity of Matthew's various medical conditions, along with added complications associated with his seizure disorder, and his new requirement to be catheterized on a regular basis several times each day, one-to-one private-duty nursing care along with attendant care/supervision continues to be an essential requirement not only for Matthew's care and treatment but also for his health and safety.
17. I have attached a list of Matthew's doctor appointments for the previous two years (Exhibit A.).

Further Affiant saith naught.

Date: May 1, 2013

Karen Brown, Affiant

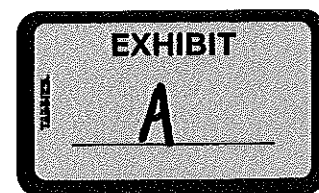
SUBSCRIBED AND SWORN TO BEFORE ME on this 1st day of May, 2013 by,  
KAREN BROWN to certify which witness my hand and official seal of office.



[Signature]  
Notary, State of Texas

## Past 2012 & 2013 Appointments at UTSWTN

Date/Time	Description	Department
<u>Monday April 29, 2013</u> <u>11:30 AM</u>	Office Visit with Neurosurgery Nurse	Neurosurgery
<u>Monday April 29, 2013</u> <u>11:15 AM</u>	Hospital Outpatient Visit with Aston Lab	University Hospital St. Paul Laboratory
<u>Monday January 01,</u> <u>2007 12:00 AM</u>	Hospital Outpatient Visit with Andrew S. Gelfand	CMC Non Specific
<u>Tuesday April 23, 2013</u> <u>10:00 AM</u>	Office Visit with Mona M. Cheung, NP	Department of Neurology
<u>Monday April 22, 2013</u> <u>11:30 AM</u>	Office Visit with Louis A. Whitworth, MD	Neurosurgery
<u>Monday April 22, 2013</u> <u>9:35 AM</u>	Hospital Outpatient Visit with Aston Lab	University Hospital St. Paul Laboratory
<u>Friday April 19, 2013</u> <u>9:00 AM</u>	Office Visit with Louis A. Whitworth, MD	Neurosurgery
<u>Friday April 19, 2013</u> <u>10:16 AM</u>	Hospital Outpatient Visit with Louis A. Whitworth, MD	University Hospital St. Paul Laboratory
<u>Thursday April 18, 2013</u> <u>11:30 AM</u>	Hospital Outpatient Visit with Zale Ct 2 Rad	UT Southwestern University Hospital Zale Lipshy Imaging
<u>Wednesday April 17,</u> <u>2013 3:30 PM</u>	Office Visit with Jessica L. Nelson, PA	Urology
<u>Wednesday April 17,</u> <u>2013 2:45 PM</u>	Hospital Outpatient Visit with Aston Lab	University Hospital St. Paul Laboratory
<u>Wednesday April 17,</u> <u>2013 1:30 PM</u>	Procedure Visit with Patricia O. Gordon, FNP	Physical Medicine & Rehab
<u>Wednesday March 20,</u> <u>2013 9:30 AM</u>	Procedure Visit with Patricia O. Gordon, FNP	Physical Medicine & Rehab
<u>Monday March 18,</u> <u>2013 2:30 PM</u>	Office Visit with Louis A. Whitworth, MD	Neurosurgery
<u>Tuesday March 12,</u> <u>2013 3:00 PM</u>	Office Visit with Pradeep Modur, MD	Department of Neurology



<u>Friday March 08, 2013</u>	Office Visit with	
<u>3:00 PM</u>	Jessica L. Nelson, PA	Urology
<u>March 5-6, 2013</u>	Zale-Lipshy Hospital - ICU	Neurosurgery
	Baclofen Catheter replacement	
<u>Friday February 22, 2013</u>	Presurgery Testing with	Pre-Surgery Testing - Zale-Lipshy
<u>10:30 AM</u>	PST Zale Nurse	
<u>Wednesday February 20, 2013</u>	Office Visit with	
<u>10:00 AM</u>	Jessica L. Nelson, PA	Urology
<u>Thursday February 14, 2013</u>	Office Visit with	
<u>4:00 PM</u>	Roopa Vemulapalli, MD	Digestive & Liver Disease
<u>Thursday February 14, 2013</u>	Office Visit with	Sleeping Breathing Disorders Center
<u>2:00 PM</u>	Joseph Viroslav, MD	
<u>Thursday February 14, 2013</u>	Office Visit with	
<u>11:00 AM</u>	Patricia O. Gordon, FNP	Physical Medicine & Rehab
<u>Thursday February 14, 2013</u>	Office Visit with	
<u>10:00 AM</u>	Mona M. Cheung, NP	Department of Neurology
<u>Thursday February 14, 2013</u>	Hospital Outpatient Visit with	University Hospital St. Paul Laboratory
<u>12:46 PM</u>	Roopa Vemulapalli, MD	
<u>Tuesday January 22, 2013</u>	Hospital Outpatient Visit with	
<u>8:00 AM</u>	Paul C Van Ness, MD	PHHS EEG LAB
		Seizures & not breathing
	St Paul Hospital - ER-ICU -floor	
<u>January 19-Feb 6, 2013</u>		(secondary - Liver, bowels, bladder, respiratory, PMR - baclofen)
<u>Tuesday January 15, 2013</u>	Hospital Outpatient Visit with	University Hospital Aston Imaging Services
<u>11:15 AM</u>	Aston Dx 1 Rad	
<u>Tuesday January 15, 2013</u>	Hospital Outpatient Visit with	University Hospital St. Paul Laboratory
<u>11:00 AM</u>	Aston Lab	
<u>Tuesday January 15, 2013</u>	Office Visit with	
<u>9:30 AM</u>	Mona M. Cheung, NP	Department of Neurology
<u>Wednesday January 02, 2013</u>	Procedure Visit with	
<u>8:30 AM</u>	Patricia O. Gordon, FNP	Physical Medicine & Rehab
<u>Thursday December 27, 2012</u>	Procedure Visit with	
<u>10:00 AM</u>	Fatma Gul, MD	Physical Medicine & Rehab
<u>Thursday December 27,</u>	Procedure Visit with	

<u>2012 9:30 AM</u>	Patricia O. Gordon, FNP	Physical Medicine & Rehab
	Hospital Outpatient Visit with	University Hospital
<u>Tuesday December 04,</u>		Professional Office Bldg. 1
<u>2012 3:20 PM</u>	Pob Dx 1 Rad	Imaging
<u>Tuesday December 04,</u>	Office Visit with	Sleeping Breathing Disorders
<u>2012 2:00 PM</u>	Joseph Viroslav, MD	Center
<u>Tuesday November 06,</u>	Hospital Outpatient Visit with	
<u>2012 8:00 AM</u>	Pradeep Modur, MD	PHHS EEG LAB
<u>Wednesday October</u>	Procedure Visit with	
<u>10, 2012 1:30 PM</u>	Patricia O. Gordon, FNP	Physical Medicine & Rehab
<u>Wednesday October</u>	Office Visit with	
<u>10, 2012 11:00 AM</u>	Preston H. Blomquist, MD	Ophthalmology Aston
<u>Tuesday September 25,</u>	Procedure Visit with	
<u>2012 9:00 AM</u>	Fatma Gul, MD	Physical Medicine & Rehab
<u>Friday September 21,</u>	Office Visit with	
<u>2012 1:30 PM</u>	Pradeep Modur, MD	Department of Neurology
<u>Tuesday September 18,</u>	Procedure Visit with	
<u>2012 9:00 AM</u>	Patricia Krohn, FNP	Physical Medicine & Rehab
<u>Wednesday August 29,</u>	Procedure Visit with	
<u>2012 3:00 PM</u>	Patricia O. Gordon, FNP	Physical Medicine & Rehab
<u>Wednesday August 22,</u>	Procedure Visit with	
<u>2012 2:00 PM</u>	Patricia O. Gordon, FNP	Physical Medicine & Rehab
<u>Tuesday August 14,</u>	Office Visit with	Department of Plastic
<u>2012 4:00 PM</u>	Jonathan J. Cheng, MD	Surgery
<u>Thursday August 02,</u>	Procedure Visit with	
<u>2012 3:00 PM</u>	Patricia O. Gordon, FNP	Physical Medicine & Rehab
<u>Thursday August 02,</u>	Hospital Outpatient Visit with	UHSL Dept. of Imaging
<u>2012 2:30 PM</u>	Zale Fluoro 2	Services
<u>Thursday August 02,</u>	Hospital Outpatient Visit with	UHSL Dept. of Imaging
<u>2012 2:30 PM</u>	Zale CT 2	Services
<u>Thursday July 12, 2012</u>	Procedure Visit with	
<u>1:30 PM</u>	Patricia O. Gordon, FNP	Physical Medicine & Rehab
<u>Tuesday June 26, 2012</u>	Hospital Outpatient Visit with	Aston Ambulatory Care
<u>11:45 AM</u>	Aston Diagnostic Xray Room	Center, Dept of Radiology
<u>Tuesday June 26, 2012</u>	Office Visit with	
<u>11:00 AM</u>	Pradeep Modur, MD	Department of Neurology
<u>Tuesday June 26, 2012</u>	Hospital Outpatient Visit with	Aston Ambulatory Care
<u>10:30 AM</u>	Aston Diagnostic Xray Room	Center, Dept of Radiology
<u>Tuesday June 19, 2012</u>	Procedure Visit with	
<u>9:30 AM</u>	Fatma Gul, MD	Physical Medicine & Rehab
<u>Thursday May 31, 2012</u>	Procedure Visit with	

<u>9:30 AM</u>	Patricia Krohn, FNP	Physical Medicine & Rehab
<u>Monday May 07, 2012</u>	Office Visit with	
<u>10:00 AM</u>	Pradeep Modur, MD	Department of Neurology
	Office Visit with	
<u>Monday April 23, 2012</u>	Puneet Kumar Gupta, MD	Department of Neurology
<u>Monday April 09, 2012</u>	Office Visit with	
<u>11:00 AM</u>	Pradeep Modur, MD	Department of Neurology
<u>Tuesday March 13, 2012 10:00 AM</u>	Procedure Visit with Patricia O. Gordon, FNP	Physical Medicine & Rehab
<u>Tuesday March 13, 2012 9:30 AM</u>	Procedure Visit with Fatma Gul, MD	Physical Medicine & Rehab
<u>Tuesday March 13, 2012 9:00 AM</u>	Office Visit with Pradeep Modur, MD	Department of Neurology
<u>Friday March 02, 2012 11:00 AM</u>	Office Visit with Joseph E. Beshay, MD	Neurosurgery
<u>Friday March 02, 2012 7:30 AM</u>	Presurgery Testing with PST Zale Nurse	Pre-Surgery Testing - Zale-Lipshy
<u>Monday March 05, 2012 7:49 AM</u>	Hospital Outpatient Visit with Joseph E. Beshay, MD	Zale Lipshy University Hospital Operating Room
<u>Monday February 27, 2012 1:30 PM</u>	Office Visit with Pradeep Modur, MD	Department of Neurology

EX. C



UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

MATTHEW ROGERS,  
by his next friend and Guardian,  
KAREN BROWN

Plaintiff,

vs.

Cause No. 3:12-cv-4055

JON WEIZENBAUM, in his official  
capacity as COMMISSIONER,  
TEXAS DEPARTMENT OF AGING and  
DISABILITY SERVICES and  
KYLE JANEK, in his official  
capacity as EXECUTIVE  
COMMISSIONER, TEXAS HEALTH  
AND HUMAN SERVICES COMMISSION

Defendants,

AFFIDAVIT OF YAIR LOTAN, M.D.

STATE OF TEXAS  
COUNTY OF DALLAS

BEFORE ME, the undersigned authority, on this day personally appeared YAIR LOTAN,  
M.D. known to me to be the person whose name is subscribed hereto, and being by me duly  
sworn, on oath deposed and stated the following:

1. "My name is YAIR LOTAN. I am an adult resident of Dallas, Dallas County, Texas, over  
the age of 18 years, and am a United States citizen. I am fully competent to make this affidavit,

and have personal knowledge of the facts stated herein.

2. "I am Matthew Rogers urologist. Matthew has been my patient since January, 2013. I last saw Matthew on April 17, 2013.
3. Matthew's medical diagnosis includes massive brain damage, spastic quadriparess, intractable epilepsy, severe pulmonary restriction, chronic lung disease, difficulty controlling secretions leading to aspiration, static encephalopathy, cortical blindness, hypertonia, and global developmental delay. In addition, Matthew cannot stand limiting him to his bed and wheelchair; he also is non-verbal making it extremely difficult for him to communicate changes in his medical condition, pain-related issues or his need for any kind of assistance. In other words, Matthew is totally dependent on his nurses and family care givers for all of his care and for all of his activities of daily living.
4. Currently, I am treating Matthew for a kidney stone. This condition requires both daily monitoring and treatment by his care staff because Matthew's condition currently requires approximately 1250 cc of extra water or fluid daily--via his g-button.
5. In addition, as part of his neurological condition of static encephalopathy, and his related conditions of severe cerebral palsy and spastic quadriparesis, Matthew is unable to empty his bladder which not only routinely results in Matthew soaking his diaper, clothes and bed but is also dangerous. Not being able to discharge urine without assistance puts Matthew at a significant risk for infection.
6. More recently, Matthew was hospitalized in January, 2013 for seizures. As a result of his uncontrolled seizures, Matthew was not breathing. He remained hospitalized for three weeks. In addition while hospitalized it was discovered that Matthew also had a urinary tract infection. Treatment required that he be catheterized every four hours. Prior to this

hospitalization, Matthew was not catheterized. But now, Matthew is catheterized around the clock requiring assistance from his home health nurse. Currently catheterization occurs at least four times per day or every six hours.

7. Finally, based on these complexities and Matthew's overall condition, Matthew's current level of care -- one-to-one nursing -- is required in order to ensure Matthew's overall health and safety and to avoid future hospitalizations.

Further Affiant saith naught.

Date: May 2  
April, 2013

\_\_\_\_\_, M.D. Affiant

SUBSCRIBED AND SWORN TO BEFORE ME on this 2nd day of May, 2013 by,  
YAIR LOTAN, M.D. to certify which witness my hand and official seal of office.

Glenda K. Gardner  
Notary, State of Texas

